

MINUTES – MARCH 1, 2004

The Caswell County Board of Commissioners met in special session at the Historic Courthouse in Yanceyville, North Carolina at 5:30 p.m. on Monday, March 1, 2004. The purpose of the meeting was to sit as the Board of Adjustment to hear an appeal from Notice of Violation issued to Mr. Vincent Marchisotto pursuant to the Caswell County Outdoor Storage Ordinance. Members present: Mel O. Battle, Chairman, Larry G. Hamlett, Vice-Chairman, Nathaniel Hall, Jack W. Hooper, Cathy W. Lucas, Kenneth D. Travis, and George W. Ward, Jr. Also present: Jeffrey H. Earp, County Manager, Robert V. Shaver, Jr., County Attorney, and Michael Cusimano, County Planner. Wanda P. Smith, Clerk to the Board, recorded the minutes.

CALL TO ORDER

Chairman Battle called the meeting to order.

BOARD OF ADJUSTMENT

Commissioner Hamlett moved, seconded by Commissioner Travis that the Board of Commissioners sit as the Board of Adjustment. The motion carried unanimously.

The Clerk to the Board administered the oath to swear in Mr. Vincent Marchisotto prior to his testimony.

Mr. Vincent Marchisotto came before the Board and stated that he is present to appeal the decision by Mr. Mike Cusimano, County Planner to issue him a Notice of Violation of the County's Outdoor Storage Ordinance and to revoke his application for a permit to operate an outdoor storage facility due to failing to meet certain procedures set forth in the County's Outdoor Storage Ordinance. Mr. Marchisotto stated that he had requested that his outdoor storage facility be grandfathered to the County's new Outdoor Storage Ordinance because he had been through this procedure before with the County's 1984 Ordinance. Mr. Marchisotto added that he felt the fencing and screening requirements are identical to the first Ordinance. Mr. Marchisotto noted that he went to court because he was in violation of the County's 1984 Outdoor Storage Ordinance and was required to erect fencing. Mr. Marchisotto added that the \$40 permit he had obtained under the 1984 Ordinance had not expired even though the Ordinance was revoked and felt that the permit should have run the year length. Mr. Marchisotto stated that he felt he was being unfairly singled out. Mr. Marchisotto added that he asked the County Planner for extra time to do a site plan. Mr. Marchisotto stated that once he reviewed what is required for a site plan, there was no way he was going to voluntarily do this. Mr. Marchisotto added that it was his understanding after reading and interpreting the requirements, that once he completed a site plan, if he wanted to enlarge his operation that he would have to request permission from the Plan Administrator to do this and he did not think that this was right. Mr. Marchisotto stated that most of the new Ordinance has to do with the Clean Water Act which is covered by the State EPA as well as the federal and they have jurisdiction

over these matters. Mr. Marchisotto added that he felt a lot of things had been put in the new Ordinance to create a job and another level of bureaucracy at the taxpayer's expense. Mr. Marchisotto noted that the automobile repair facilities were exempt from the first Ordinance as well as vehicles that were held for restoration purposes. Mr. Marchisotto stated that he has a lot of restorable antique vehicles on his property that have historical significance. Mr. Marchisotto added that one day he may have a museum of these vehicles. Mr. Marchisotto stated that he would be glad to work with the Board on this issue if they would give him the opportunity.

Mr. Marchisotto stated that he felt like he was left out of the process from the beginning and now felt that he was being singled out, and not being granted any variances to this point. Mr. Marchisotto added that he had hoped that the letter he had written to the Board would forestall any action by the County Planner until the Board made a decision, but it did not. Mr. Marchisotto stated that when he received the County Planner's letters he became very angry because of the phrasing of the letters. Mr. Marchisotto added that he did not want to take orders from Mr. Cusimano, the County Planner. Mr. Marchisotto noted that if he is treated with respect and in a courteous manner, he will return it.

Mr. Marchisotto informed the Board that he had a health problem with a member of his immediate family and had alluded to this when he wrote to Mr. Cusimano to ask for time. Mr. Marchisotto added that this is a personal matter and when talking about zoning or requesting variances, you have to reveal your personal life to the public and he has always wanted to do things on his own and not relied on other people's help and it bothers him to do this now.

Chairman Battle asked Mr. Marchisotto if he is requesting to be grandfathered or if he has a problem with the current Ordinance. Mr. Marchisotto answered that his request is to be grandfathered due to what he has had to go through with the prior Ordinance as far as fencing and screening requirements. Chairman Battle asked Mr. Marchisotto if his being grandfathered is not a possibility, is this his only alternative. Mr. Marchisotto answered that no, this is not his only alternative, he would be glad to compromise in some way.

Commissioner Travis asked Mr. Cusimano if the Site Plan is the only area in which Mr. Marchisotto is not in compliance. Mr. Cusimano answered that Mr. Marchisotto failed to file the required Site Plan in the required timeframe, which therefore, led to Notice of Violation. Mr. Marchisotto stated that as far as his children are concerned, he did not want to say that his property will be a 55-acre salvage yard and this be set in stone and be restricted where it cannot be changed.

Commissioner Travis asked Mr. Marchisotto how long it would take him to draw a Site Plan. Mr. Marchisotto stated that it depends on how specific it would need to be, but noted that the County already has aerial photographs and everything needed is in the County's records. Mr. Marchisotto added that the County even has the topography records.

Commissioner Travis asked Mr. Marchisotto if it is correct that the reason he is present is because he does not have a Site Plan. Mr. Marchisotto answered that this is correct, but added that the letters sent to him from Mr. Mike Cusimano stated that he now had to be in compliance with everything immediately because he had not completed a Site Plan, and this is an impossibility.

Mr. Bob Shaver, County Attorney, stated that the way the new Ordinance is set up, the existing facilities have three years in which to come into compliance with the terms of the new Ordinance and that three years is monitored by stages to see that efforts are being made to comply and it is also dependent upon following the steps that need to be followed. Mr. Shaver added that when an individual fails to make the steps and does not submit a Site Plan in a timely manner, then a Notice of Violation is issued. Mr. Shaver stated that the Board of Adjustment could modify the effect of this Notice if it so chooses, but they are present because that specific step relating to the Site Plan was not followed after the notification to submit the Site Plan. Mr. Shaver noted that Mr. Cusimano did grant one extension to Mr. Marchisotto to submit the Site Plan.

Commissioner Hall asked if there are other critical steps after the Site Plan step. Mr. Cusimano responded that yes, there are other critical steps and deadlines for meeting them throughout the 36-month period.

Chairman Battle referred to a Notice of Violation issued to Mr. Marchisotto from Mr. Cusimano citing the following three violations:

- 1) Section Seven A: Operating an Outdoor Storage facility without a permit.
- 2) Section Seven D1: Failure to properly screen an Outdoor Storage Facility from view.
- 3) Section Seven D2: Failure to properly fence an Outdoor Storage Facility.

Chairman Battle raised questions as to the other two violations. The County Attorney clarified that the time line would have been that an existing facility would have three years in which to come within compliance. Mr. Shaver stated that a permit would have been obtained, a Site Plan submitted, and then the next steps would have been completed in phases. Mr. Shaver added that with Mr. Marchisotto coming off track and not submitting a Site Plan, then it was treated as if someone was operating a facility without a permit and then it is looked at as to how this facility does not meet the current Ordinance and that is why the violations relating to fencing and screening are noted because Mr. Marchisotto's facility does not meet the current guidelines on fencing and screening. Mr. Marchisotto stated that some of his fencing needs repair, but felt that it should be sufficient. Commissioner Lucas asked if Mr. Marchisotto was saying that he was in compliance with the fencing requirements in the old Ordinance. Mr. Marchisotto clarified that after eight months, the courts finally determined that he had become in compliance with the old Ordinance.

The Clerk to the Board administered the oath to swear in Mr. Mike Cusimano, County Planner prior to his testimony.

Mr. Mike Cusimano, County Planner, stated that the County's old Junkyard Ordinance has been repealed and is no longer in effect and therefore, anything pertaining to it was not germane. Mr. Cusimano added in regards to the County's new Outdoor Storage Ordinance, existing facilities were granted a 60 day period to file an application to trigger being "grandfathered". Mr. Cusimano noted that the County's current Ordinance does not have a "grandfather clause", rather has an amortization clause. Mr. Cusimano clarified that "grandfathered" facilities would be allowed to remain as they are without having to comply with anything whatsoever, while an amortization clause allows existing facilities the opportunity to gain compliance. Mr. Cusimano noted that the compliance period in total for the current Ordinance is 36 months. Mr. Cusimano informed the Board that in the first sixty days an application had to be filed and part of that application included that a Site Plan with all the details outlined in the Ordinance be submitted. Mr. Cusimano noted that Mr. Marchisotto did file an application, but failed the step of submitting a Site Plan. Mr. Cusimano added that Mr. Marchisotto was given materials from his office to assist him in producing a Site Plan and was given a reasonable amount of time to do this. Mr. Cusimano stated that notices were mailed to Mr. Marchisotto on October 8th and again on October 30th reminding him of his obligation to complete a Site Plan. Mr. Cusimano noted that the Site Plan was due on August 18th which was the end of the 60 day period from the date of adoption of the Ordinance. Mr. Cusimano added that Mr. Marchisotto had from June 19 – August 18 to accomplish the 60 day period, yet gave him until October 8th to complete the Site Plan. Mr. Cusimano stated that he received an email from Mr. Marchisotto requesting more time and he granted him more time. Mr. Cusimano added that he sent Mr. Marchisotto another warning notice on October 30th and gave him until November 18th to complete the Site Plan, yet he did not comply with this. Mr. Cusimano stated that on November 19th, in accordance with the terms of the County's Ordinance, he had no choice but to issue the Notice of Violation to Mr. Marchisotto. Mr. Cusimano noted that since Mr. Marchisotto had failed to obtain the status of an existing facility, he had no choice but to treat this as a new facility which resulted in the three citations noted in the Notice of Violation.

Mr. Shaver requested that Mr. Cusimano describe what is entailed in preparation of a Site Plan. Mr. Cusimano stated that to all operators who filed an application, he gave two copies of an aerial photograph showing property lines, highways, and all the surrounding properties to their parcels of land. Mr. Cusimano added that once they had this document, the operators needed to determine the layout of everything on their property and how they wanted it to look. Mr. Cusimano noted that he advised them that since this was an initial Site Plan, to go ahead and label future uses in order to prevent them from having to come back in the near future and amending their Site Plan. Mr. Cusimano stated that after they did this, he asked them to put on their scale drawing what they pictured as what they wanted their facility to look like, show their fencing, landscaping, natural vegetative buffer, where entrances would be located, general perimeter of the facility, and drainage pattern. Mr. Cusimano noted that it takes about 30 minutes to prepare a Site Plan.

Upon questioning from Commissioner Hooper, Mr. Cusimano answered that Mr. Marchisotto's fencing is in need of repair and he does not have adequate screening of his

facility at this time. Mr. Cusimano stated that the fencing in general is in pretty good shape. Mr. Cusimano added that if Mr. Marchisotto had submitted a Site Plan, he would have until this coming June to plant shrubbery and would have had from three years of date of adoption to repair the fence. Mr. Cusimano noted that when Mr. Marchisotto failed to submit a Site Plan, he lost this status.

Commissioner Hooper stated that he would like to see Mr. Marchisotto keep his business and do what he is supposed to do since he understands what is going on now. Commissioner Hooper added that he felt Mr. Marchisotto would be willing to do what is required of him and submit a Site Plan, along with repairing his fencing and planting shrubbery. Mr. Cusimano noted that this would be the Board's prerogative, but noted that there is the matter of the civil citation which the Board would have to enforce or dismiss. Mr. Cusimano added that due to his violation, at this time Mr. Marchisotto owes the County \$10,050. Upon questioning from Chairman Battle, Mr. Cusimano clarified that by failing to follow the steps outlined in the Ordinance, Mr. Marchisotto forfeited his status as an existing facility.

Mr. Marchisotto stated that he was not aware that he could have put proposed future growth areas on the Site Plan. Mr. Marchisotto added that as far as screening, pine trees are planted along the front fence and if he has to plant scrubs, they would have to come down. Mr. Marchisotto stated that the pine trees are about four to five feet apart, and he did not feel it would be fair that they would have to come down.

Commissioner Hamlett asked Mr. Marchisotto if he would be willing to prepare and submit a Site Plan now. Mr. Marchisotto answered that yes, he would be willing to submit a Site Plan as long as it is not going to lock him in or his children as far as future uses. Mr. Marchisotto stated that as long as his children are not told that his facility will always have to be a salvage yard, he would be agreeable.

Commissioner Travis informed Mr. Marchisotto that even though a Site Plan is submitted, this does not mean that five years down the road that the facility can be completely eliminated.

Mr. Marchisotto added that he feels that his property is being spot zoned.

Chairman Battle requested that Mr. Cusimano explain that if a Site Plan is developed, what can and cannot happen with that plan and the land involved. Mr. Cusimano answered that once a Site Plan is submitted, it is a guide for them to go by. Mr. Cusimano stated that primarily, this is a function of Code Enforcement to go out and see where things are supposed to be when they are called out to make an inspection. Mr. Cusimano added that the Ordinance is very flexible and Site Plans can be amended at any time and does not require that an individual come before the Board of Commissioners because this would be an administrative function. Mr. Cusimano stated that the operator would come to his office and inform him that things have changed, land needs to be added or taken away, or maybe they have decided not to operate the facility any longer.

Commissioner Lucas asked Mr. Marchisotto if in his opinion he feels that he is already zoned. Mr. Marchisotto answered that he does feel that he has been spot zoned because he buys and sells old cars.

Mr. Marchisotto stated that he felt that he had just cause to not comply with the Ordinance at the time, but would be glad to comply now. Mr. Marchisotto added that he would like to at least partially be grandfathered due to the history of the situation.

Commissioner Lucas asked Mr. Cusimano when the Committee was addressing the issue of “grandfathering”, how was the decision reached. Mr. Cusimano answered that when the Committee was studying this, it learned that the State Legislature allows counties to deal with land use issues such as this either by grandfathering or amortizing, but it cannot do both. Mr. Cusimano stated that the Committee made a decision to allow the amortization clause. Mr. Marchisotto noted that the County’s Ordinance in 1994 did not allow the grandfather clause, it also used the amortization, but felt that it should have been allowed.

Mr. Cusimano explained the fencing and screening requirements. Mr. Marchisotto stated that he put his fence behind the pine trees and did not think that he could put any greenery there that would live between the pines that are there.

Chairman Battle informed Mr. Marchisotto that the Board would notify him of their decision.

THE ADJOURNMENT

At 6:15 p.m. Commissioner Ward moved, seconded by Commissioner Hall to adjourn as the Board of Adjustment. The motion carried unanimously.

Wanda P. Smith
Clerk to the Board

M. O. Battle
Chairman
